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November 5, 2020

VIA ECF

Hon. Ronnie Abrams  
U.S. District Judge  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2203  
New York, New York 10007

Re: Klein v. Aicher, 1:19-cv-09172 (RA)

Your Honor:

I represent the Plaintiff Refael Klein ("Plaintiff") in the above-referenced matter.

Plaintiff requests that Plaintiff's Declaration [Dkt. 94] be sealed and that Plaintiff be permitted to refile that document in redacted form. The Declaration includes a statement regarding Plaintiff's confidential medical information. *See* ¶ 5. Pursuant to Rule 5(a)(1) of Your Honor's Individual Rules and Practices, this category of information constitutes information requiring caution as described in the Southern District's ECF Privacy Policy.

Respectfully Submitted,

William B. Kerr

cc: Thomas D'Antonio (Via ECF)

Application granted. As with Klein's October 18, 2020 letter, the Court recognizes that Klein's November 4, 2020 declaration contains information about Klein's medical conditions that he understandably wishes to remain private. Cf. *Johnson v. Fed. Bureau of Prisons*, no. 16-cv-3919, 2017 U.S. Dist. LEXIS 186123, \*5 (E.D.N.Y. Nov. 9 2017) ("[F]ederal courts routinely issue protective orders to ensure the confidentiality of medical records."). Accordingly, the Clerk of Court is respectfully directed to seal Dkt. 94, rendering it visible only to the parties (Refael Klein and Stacey Aicher), their counsel, and Court staff. Klein shall file the attached redacted version of his declaration no later than November 9, 2020.

SO ORDERED.

Ronnie Abrams, U.S.D.J.

November 6, 2020

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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REFAEL KLEIN,

Plaintiff,

Civil Action No.: 19-CV-9172

-against-

**DECLARATION OF  
REFAEL KLEIN**

STACEY R. B. AICHER,

Defendant.

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Refael Klein, pursuant to 28 U.S.C. ¶ 1746, declares under penalty of perjury that the foregoing is true and correct:

1. I was the Plaintiff in the above-captioned matter which was dismissed by Opinion and Order of the Court dated July 21, 2020. [Dkt. 74] As such, I am fully familiar with the facts recited in this Declaration. This Declaration is submitted in opposition to Defendant Stacey R. B. Aicher's ("Defendant") motion for contempt and/or for further sanctions against me.

2. In conjunction with dismissal of this action, the Court awarded sanctions against me in the form of an award in favor of Defendant Stacey R. B. Aicher ("Defendant") for her attorney's fees and costs incurred in defending herself in this action.<sup>1</sup> [Dkt. 74] The Court determined the amount of the sanction to be \$74,160. [Dkt. 77]

3. I understand that on September 25, 2020, Defendant filed a letter motion to compel my payment of the \$74,160. [Dkt. 83] In response, the Court ordered that such payment be made by October 6, 2020 [Dkt. 84] which the Court then extended to October 20, 2020. [Dkt. 88]

4. Due to my current financial situation, I have been unable to make payment of the \$74,160 and have been unable to make any payments toward the \$74,160.

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<sup>1</sup> The Court dismissed for lack of subject matter jurisdiction.

5. I am seventy-six years old and [REDACTED]. [REDACTED]

[REDACTED]. [REDACTED]

[REDACTED].

6. I currently have \$178 in my checking/savings account and other than my automated Social Security deposit account, I have no other bank accounts. *See* Exhibit A.

7. I retired from Landmark Ventures (USA) Inc. at the end of 2018. For the next half year, I continued to receive a biweekly salary of some \$2,940.

8. Since that time, I have not received any income other than Social Security benefits and have been dependent upon another family member for my livelihood which consists primarily of groceries, clothing, home maintenance, utilities, gas and a home mortgage. My largest expense is my home mortgage which is \$989 per month and I currently have a balance of \$81,077. *See* Exhibit B.

9. I have no money market accounts, mutual fund accounts or any other investment accounts.

10. I do not have a 401(K) or any other retirement account (other than Social Security).

11. I am not the beneficiary of any differed compensation plans, annuities, life insurance, trust or any other financial planning vehicle.

12. I do not own any automobiles. I have one car for my use and one for my wife's use and both are leased. I do not own a boat or any other vehicle.

13. I do not own any artwork, jewelry or any other items of significant value.

14. No one owes me any money.

15. Further, I am unable to borrow any money so that I can pay the sanction award. Because I do not have employment income, I do not qualify for a bank loan. Further, I cannot ask

any of my friends or family to pay the sanction award on my behalf because I would be unable to pay them back.

16. I have not depleted any assets for the purposes of making this Declaration, nor have I pledged, transferred or otherwise assigned any of my assets, income or anything of value to anyone for any purpose, including but not limited to, the purpose of avoiding payment of this sanction award.

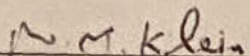
17. Defendant has requested that the Court award judgment for the \$74,160 and/or for the amount of any additional sanctions that may be awarded. In many cases, a medical provider will obtain a credit report before determining whether to provide expensive treatment. Therefore, should a judgment be awarded in this case, it will immediately and substantially impact my credit which will in turn diminish or even eliminate my ability to obtain proper medical care.

18. Such a judgment would have punitive effect and in light of the fact that this matter was dismissed for lack of subject matter jurisdiction where the factual allegations of my complaint were never determined to be frivolous on the merits, I respectfully request that the Court deny Defendant's request for a judgment for the \$74,160 and/or for the amount of any additional sanctions that may be awarded.

19. I am able and willing to testify to each of the matters set forth herein and am willing to appear for deposition on these and any other matters that Defendant may reasonably request regarding my financial inability to satisfy the sanction award.

For the reasons set forth herein, Defendant's motion for contempt, to compel payment and/or for further sanctions should be denied.

Dated: November 4, 2020

  
Refael Klein